

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
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Rockville, Maryland 20850

www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2727

PETITION OF KRIS A. AND RHEBA A. KELLEY

OPINION OF THE BOARD

(Opinion Adopted June 17, 2009)

(Effective Date of Opinion: July 2, 2009)

Case No. S-2727 is an application for a special exception, pursuant to Section 59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment.

The Hearing Examiner for Montgomery County held a public hearing on the application on June 2, 2008, at which time the Hearing Examiner discovered that the subject property failed to meet the minimum lot size for the use. The Hearing Examiner left the record in the case open until May 11, 2009 to allow the Petitioners to pursue a variance for the size of the lot, which the Board of Appeals granted on April 2, 2009 in Case No. A-6283. On June 3, 2009, the Hearing Examiner issued a Report and Recommendation for approval of the special exception.

The subject property is Lot Pt. 29, Block A, located at 16004 Mt. Everest Lane, Silver Spring, Maryland, 20906, in the RE-2 Zone.

Decision of the Board: Special Exception **Granted** Subject
To the Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on June 17, 2009. After careful consideration and review of the record the Board adopts the Report and Recommendation and grants the special exception subject to the following conditions:

1. The Petitioners shall be bound by all of their testimony, representations and exhibits of record identified in the Hearing Examiner's Report and Recommendation and in the Opinion of the Board;
2. The Petitioners shall take the following steps to comply with the items set forth in the March 25, 2008, Memorandum of Ivey Quarles, Housing Code Inspector,

Division of Housing and Code Enforcement (Exhibits 12 and 13):

- a. Petitioners must apply for building, electrical, and plumbing permits, to construct the accessory apartment.
 - b. Petitioners must comply with all requirements pertaining to new construction and obtain approval from Department of Permitting Services on all work done.
 - c. Petitioners must submit a site plan and approval of the new construction to the Department of Housing and Community Affairs and request an inspection to determine if the property complies with Chapter 26, Montgomery County Housing and Building Maintenance Standards;
3. Petitioners must comply with DHCA's determination of the maximum permitted occupancy for the accessory apartment, and any other DHCA directives needed to insure that the accessory apartment is maintained up to Code;
4. Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located;
5. Petitioners must not receive compensation for the occupancy of more than one dwelling unit;
6. Petitioners must make one off-street parking space available for their accessory apartment tenant;
7. Since this special exception is dependent upon the variance granted in BOA # A-6283 on April 2, 2009, Petitioners must comply with the conditions of that variance:
 - a. The Petitioners shall be bound by all of their testimony and exhibits of record [in BOA #A-6283] to the extent that such evidence and representations are identified in the Board's Opinion granting the variance; and
 - b. The construction and use must be completed according to plans entered in the record [of BOA #A-6283] as Exhibit Nos. 3(a) through 3(d), 4, and 5(a) through 5(d).
8. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements

On a motion by David K. Perdue, Vice-Chair, seconded by Stanley B. Boyd, with Carolyn J. Shawaker, Walter S. Booth and Catherine G. Titus, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 2nd day of July, 2009.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.